

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**ANTHONY WEATHERSPOON**  
**Petitioner-defendant,**

**v.**

**Case No. 16-C-900**  
**(Criminal Case No. 13-CR-87)**

**UNITED STATES OF AMERICA**  
**Respondent-plaintiff.**

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**ORDER**

On October 18, 2013, petitioner Anthony Weatherspoon pleaded guilty to bank robbery, contrary to 18 U.S.C. § 2113(a). At his March 14, 2014, sentencing hearing, without objection, I adopted the guideline calculations in the pre-sentence report (“PSR”): base offense level 20, U.S.S.G. § 2B3.1(a); plus 2 because the property of a financial institution was taken, § 2B3.1(b)(1); plus 3 because a dangerous weapon was brandished or possessed, § 2B3.1(b)(2)(E); plus 2 because a person was restrained, § 2B3.1(b)(4)(B); and minus 3 for acceptance of responsibility, U.S.S.G. § 3E1.1, producing a final offense level of 24. The PSR set the criminal history category at III, producing a guideline range of 63-78 months. On consideration of the factors under 18 U.S.C. § 3553(a), I imposed a sentence of 72 months’ imprisonment. Petitioner took no direct appeal.

On April 29, 2016, petitioner filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, seeking to raise a claim under Johnson v. United States, 135 S. Ct. 2551 (2015). On May 4, 2016, I denied that motion. Petitioner again did not appeal. On July 11, 2016, petitioner filed another § 2255 motion, this time arguing that the court erred in imposing the enhancement for possession of a dangerous weapon under U.S.S.G. § 2B3.1(b)(2)(E).

Section 2255(h) forbids a prisoner to file a second or subsequent collateral attack without first obtaining permission from the court of appeals. Curry v. United States, 507 F.3d 603, 604 (7<sup>th</sup> Cir. 2007). The district court must dismiss for lack of jurisdiction a successive motion filed without appellate permission. Id. at 605.

**THEREFORE, IT IS ORDERED** that petitioner's § 2255 motion (R. 1) is **DISMISSED**.<sup>1</sup>

The Clerk shall enter judgment dismissing this action.

Dated at Milwaukee, Wisconsin, this 13<sup>th</sup> day of July, 2016.

/s Lynn Adelman  
LYNN ADELMAN  
District Judge

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<sup>1</sup>I decline to transfer the motion to the court of appeals. See United States v. Coleman, 763 F.3d 706, 708 (7<sup>th</sup> Cir. 2014) (noting that guideline errors generally are not cognizable under § 2255), cert. denied, 135 S. Ct. 1574 (2015); see also United States v. Stitman, 472 F.3d 983, 987-88 (7<sup>th</sup> Cir. 2007) (imposing U.S.S.G. § 2B3.1(b)(2)(E) enhancement on similar facts). The PSR recommended the enhancement based on the objective impression created by defendant's conduct, not merely the subjective belief of the teller. (See PSR ¶ 27; see also Sen. Hr'g Tr. [R. 21] at 21.)